that on 19th of July 1952 — three days after Letters of Administration had been extracted — the defendant informed him that he was proceeding with an application to seek the permission of the Court to sell the house and land.

As regards issue 2, "Is the agreement binding on the estate of the deceased?". In the case of *In re Watson, ex parte Phillips*[1] it was held that where, during the time when there is no personal representative of the estate of a deceased person, services have been rendered which not only were for the benefit of the estate, but also were rendered under a contract with someone who subsequently by becoming administrator became authorised to bind the estate, and who ratified the contract, the estate of the deceased is liable for such services. In this case it cannot now be determined whether the proposed sale would be for the benefit of the estate. That would be, or have been, for the Court to say upon granting or refusing the application for leave to sell. There is a distinction between this case and the case cited; but nevertheless, I consider that the principle laid down in that case may properly be applied here. In the view of this Court the estate is bound by the agreement.

As regards issues 3 and 4, "Did the defendant receive a better offer and, if so, did that exempt him from making an application to the Court, pursuant to paragraph 3 of the agreement?". I am satisfied that he did receive a better offer and that it did not exempt him from fulfilling clause 3 of the agreement. It would be a novel proposition which would allow an administrator or a trustee to enter into an agreement and then to break it with impunity on the score that, by doing so, he could derive greater advantage for the estate or the *cestui qui trust*.

As regards issue 5, "Does section 20(e) of the Specific Relief (Malay States) Ordinance 1950 prevent an order for specific performance in this case?". I am quite satisfied that the agreement was neither in breach of trust nor in excess of trust on the part of the defendant. The agreement was not an agreement to sell in the first place but merely an agreement to obtain the permission of the Court to sell, and only to sell after such permission had been granted. It cannot be either in breach of trust or in excessive power to seek the permission of the Court.

I will deal with issues 6 and 7 in the following paragraphs of this judgment.

It is clear that no useful purpose would be served, so far as the plaintiff is concerned, by giving an order for the specific performance of the agreement. To do so would merely mean that the defendant would be bound to apply to the Court for permission to sell. I do not find myself able, in law, to jump, as it were, the condition precedent for the seeking of an order to sell and proceed to order for the specific performance of the sale. I cannot say whether the Court would grant permission or not and if it were to refuse permission the plaintiff would have achieved nothing upon his claim. It seems to me, therefore, that the only proper relief that I could give to the plaintiff is to make an order for damages for breach of contract on the part of the defendant. At paragraph 3 of the agreement the defendant undertook to take all steps necessary, without delay, in order to get the permission of the Court to sell the land. It is not necessary for me to say more than that the delay is unconscionable. Taking into account the fact that the plaintiff has paid $5,000 deposit I award him $10,000 damages for breach of agreement but I make no order as regards specific performance. I order that these damages be paid as follows — $5,000 to be paid out of the estate (as being the amount paid by way of deposit) and $5,000 to be paid by the defendant personally and not out of the estate. I am unable to see that the defendant is entitled to any relief on his counter-claim. He put the plaintiff in occupation of the premises. The payment of rent was not in the contemplation of the agreement; the plaintiff was never a trespasser, nor was he at any time the agent of the defendant or of the estate. If I were to order the payment of any damages (by way of rent or otherwise) by the plaintiff it would be tantamount to condoning the defendant's breach of agreement. If the value of the estate is lessened by reason of this judgment it is because the defendant is a bad administrator and the beneficiaries will be wise to have him removed and to supplant him by somebody who will be able to safe-guard their interests better. I order that the defendant pay the costs of this case personally.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Lovelace & Hastings.*

W. H. L. SCOTT v. REGINA

[A. Cr. J. (Whitton J.) August 27, 1954]

[Singapore — Magistrate's Appeal No. 99 of 1954]

Road Traffic Ordinance, 1941, s. 48(1) — Using and permitting vehicle to be used on road without policy of insurance being in force — Third party risk — Unlicensed person in driver's seat holding steering-wheel while holder of licence sat beside and had a hand on the steering-wheel — User uncovered by insurance.

In this case it was undisputed that at about 1.40 a.m. on April 13, 1954 car SF 9492 was stopped by a Traffic Branch police officer, and at that time a European lady was in the driver's seat holding the steering-wheel while the appellant sat beside her. This lady was not the holder of a driving licence. The police officer stated that when he saw the car it was not being driven smoothly, but was rocking. The only conflict of fact was as to whether the appellant also had a hand on the steering-wheel as he claimed but the police officer denied. The learned Magistrate "found it difficult to believe" the story of the appellant and convicted him under s. 48(1) of the Road Traffic Ordinance and the appellant was fined $100 or 20 days and was disqualified from holding a driving licence for one year.

On appeal the learned Judge proceeded to deal on the basis that the appellant should be given the benefit of the doubt, i.e. on the basis that he had a hand on the steering-wheel.

Held: (1) the correct view to take of the evidence in this case was that the prosecution **prima facie** established that the user by the appellant's friend was not covered by third party insurance, and consequently a burden was placed on the appellant to prove that the user was so covered; (2) as the appellant had not rebutted the **prima facie** case established by the prosecution the conviction was correct.

Case referred to:—

(1) *Langman v. Valentine & Anor.* (1952) 2 All E.R. 803; (1952) W.N. 475.

MAGISTRATE'S APPEAL.

L. Rayner for the appellant.

A. V. Winslow (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Whitton J. : — The appellant was convicted under section 48(1) of the Road Traffic Ordinance and fined $100 or 20 days and was disqualified from holding a driving licence for one year.

It was not disputed that about 1.40 a.m. on 13th April 1954, car SF. 9492 was stopped by a Traffic Branch police officer, and at that time a European lady was in the driver's seat holding the steering-wheel while the appellant sat beside her. This lady was not the holder of a driving licence. The police officer stated that when he saw the car it was not being driven smoothly, but was rocking. The only conflict of fact was as to whether the appellant also had a hand on the steering-wheel as he claimed but the police officer denied. In this connection it seems to me the learned Magistrate took an unjustifiably unfavourable view of the appellant's veracity when he says in his grounds of decision "from the facts of the case I found it difficult to believe the story of Accused 2." This is the type of observation one might expect when the defence story was in effect a substantial denial of the Prosecution evidence, but in this case the only point on which the appellant questioned the accuracy of the police officer was on the latter's statement that the appellant did not have a hand on the steering-wheel. It seems to me when one considers all the circumstances this is a point on which the police officer might well have been honestly mistaken. As I feel the learned Magistrate did not form an altogether fair view of the appellant's credibility — he does not comment on his demeanour which, of course, might have put a different complexion on the matter as far as an Appellate Court was concerned — I proceed to deal with this appeal on the basis the appellant should be given the benefit of the doubt on this point, and accordingly on the basis that he had a hand on the steering-wheel.

At the hearing of the appeal counsel for the appellant strongly relied on *Langman v. Valentine & Anor.*[1]. In that case it was decided that a qualified driver, who had a policy of insurance in the usual terms, whilst sitting in the passenger seat beside an unlicensed driver in the driver's seat but exercising sufficient control of the car to be also held to be a driver had not committed the offence of unlawfully permitting the use of the car whilst not covered by third party insurance, on the grounds that in those circumstances a person injured by the car through bad driving could have recovered under the policy in question and the holder of the policy would have been entitled to claim indemnity. Now if it is conceded on the authority of *Langman v. Valentine*[1] that there can be two drivers of a car it must also, I think, be conceded that there can be two users. In this connection it seems to me that if the appellant's lady friend through her lack of skill had caused injury to some other user of the road at the time in question — it will be recalled the police officer's attention was apparently drawn to the car because it was rocking — the insurers of the appellant might well under the policy (which was put in as an exhibit at the time) successfully resist liability on the basis that, whether there was user by the appellant or not, it was the user by the unlicensed driver which was the cause of the accident, and such user was not covered by insurance. Moreover under the policy the Company is not liable "in respect of being driven with the general consent of the insured or of his representative by any person who to the knowledge of the insured or of such representative does not hold a licence to drive such motor car etc." This Court will naturally give careful consideration to a decision of the weight of *Langman v. Valentine*[1], but it must reach its decision on the evidence before it and I am of the opinion the correct view to take of the evidence in this case is that the prosecution *prima facie* established that the user by appellant's friend was not covered by third party insurance, and consequently a burden was placed on the appellant to prove — at least to the extent such a

burden requires of the defence — that the user was covered — in other words that had an accident occurred the insurance company would have been liable in the circumstances, even though this lady who, as far as the evidence goes has never held a driving licence, was in the driver's seat. An insurance accountant called for the defence was not prepared — probably very prudently — to express an opinion whether the Insurance company would be liable, and it seems to me the *prima facie* case that the user was uncovered established by the prosecution stood unrebutted. I have come to the conclusion, accordingly, the conviction was correct.

Regarding the circumstances broadly I cannot feel that this case was a very gross breach of the law. There is no evidence that any other party was endangered by the presence of this car on the road, and, while at many times of the day a Court might well infer the existence of such danger without any specific evidence on the matter, I do not think there is justification for assuming any danger was caused by this particular driving in Mountbatten Road shortly before 2 a.m. on a Tuesday morning. I confirm the fine, but as, having regard to these aspects I have just mentioned, it seems to me that this was a breach of the law more in the letter than in the spirit, I think a period of one month's driving licence disqualification from to-day's date will meet the requirements of the case.

Order accordingly.

Solicitors for the appellant: *L. Rayner & Co.*

Re CHNG KEE HUAT.

[O. Cr. J. (Murray-Aynsley C.J.) September 17, 1954]

[Singapore — Habeas Corpus Nos. 1 & 3 of 1954]

Banishment Ordinance (Cap. 25), s. 6 — Construction of — Writ of Habeas Corpus.

This was an application for a Writ of **Habeas Corpus ad Subjiciendum** under the provisions of Chapter XXXIII of the Criminal Procedure Code (Cap. 21) in the matter of Chng Kee Huat detained in Her Majesty's Civil Prison, Outram Road, Singapore, and to be expelled under section 6(1)(b) of the Banishment Ordinance. Section 6 of the Banishment Ordinance reads:

"6. — (1) The Governor in Council may make an order, in this Ordinance referred to as an expulsion order, requiring an alien to leave the Colony within a time fixed by the order and thereafter to remain out of the Colony for such period as to the Governor in Council seems expedient,

(a) if it is certified to him by any Court that the alien has been convicted of any offence for which the Court has power to impose a penalty without the option of a fine, and that the Court recommends that an expulsion order should be made in his case, either in addition to or in lieu of the sentence; and if it is also certified to him by the Court that the alien —

(i) has, within six months from the time at which the proceedings for the certificate were commenced, been convicted of being a vagrant in the Colony or in any of the States or countries included for the time being in the Schedule; or

(ii) has been sentenced in any of the States or countries included for the time being in the Schedule or in a foreign country for a crime, not being an offence of a political character, which is an offence under the Fugitive Offenders Act, 1881, or an extradition crime within the meaning of the Extradition Acts, 1870 and 1873.

(b) if he deems it to be conducive to the public good.

(2) ....."

Para (b) was added by an amendment made in 1928. In construing this section, —

Held: if one pays regard to the full stop at the end of section 6(1)(a), para. (b) of section 6(1) can have no meaning at all. If one disregards it, as one should in strictness do every time in construing a statute, then the only grammatical construction possible of the section is to make what occurs after (b) a qualification to the rest of the section.

APPLICATION for Writ of *Habeas Corpus.*

L. A. J. Smith for the applicant.

A. V. Winslow (Crown Counsel) for the Crown.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — This is an application by a person who is clearly an alien within the meaning of section 6 of the Banishment Ordinance. That being so there remains to be considered a question of construction of the section. The conditions set out under (a) have not been fulfilled; it has to be considered whether what appears under (b) is a qualification of (a) or an alternative to it.

The amendment which added (b) in 1928 was apparently based on the United Kingdom Aliens Order, 1920, but in that case the word "or" was used. Here there is no "or" but the fullstop at the end of (a) was retained and remained there in the present revised edition although alterations were made in the section at that time. If one pays regards to the fullstop, (b) can have no meaning at all. If one disregards it, as one should in strictness do every time in construing a statute, then it seems to me that the only grammatical construction possible of the section is to make what occurs after (b) a qualification to the rest of the section.

The rule nisi must be made absolute.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw.*